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ABSTRACT

This report looks at the use of public library online circulation systems for the generation of in-house secondary information--such as statistical reports and mailing lists--and also considers problems in maintaining confidentiality of patron records when using online circulation systems. Based on a survey of the literature, general information is presented on the report-generating and system security capabilities of 17 online circulation systems. More detailed information on OCLC's Circulation Control System, East Brunswick Library's Circulation System, Ringgold's Nonesuch Circulation System, the University of Toronto's UTLAS CIRC, the Geac Library Information System, and CLSI's LIBS 100, based on material provided by the vendors, is presented in an appendix. Also included in the report is a survey of the legal basis for confidentiality of patron records with a discussion of cases where confidentiality has been challenged under state open-record laws. Finally, based on responses to a questionnaire, information is presented on the uses and problems of online circulation systems in actual library situations, specifically in the Albany Public Library (New York), the Liverpool Public Library (New York), and the Milwaukee Public Library (Wisconsin). A 46-item annotated bibliography and a subject index to the bibliography conclude the report. (Author/ESR)

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AUTOMATED CIRCULATION SYSTEMS AS A SOURCE OF SECONDARY INFORMATION

by

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ABSTRACT

On-line circulation systems in public libraries can serve as a source of in-house secondary information in the form of statistical reports, mailing lists, etc., although the use may be more potential than actual. The same capabilities that allow a system to search a record by various access points for reports also pose problems in maintaining confidentiality of patron records. A literature survey yielded general information on report-generating capabilities and system security for ALIS II/S, CLASSIC, Checkpoint, East Brunswick Library, Gaylord, Geac, Decicom, IBM System/7, Integrated Library System, JRL-1000, LIBS 100, Plessey Stored Program Control and Module 4, SCI, ULYSIS, University of Connecticut-Storrs, and System 2000. More detailed information on OCLC's Circulation Control System, East Brunswick Library's Circulation System, Ringgold's Nonesuch Circulation System, the University of Toronto's UTLAS CIRC, the Geac Library Information System, and CLSI's LIBS 100, based on material provided by the vendors, is in the Appendix. In addition to the protection offered by the system is the protection offered by the Bill of Rights and various privacy acts; the second part of the study is a survey of the legal basis for confidentiality of patron records, including cases where this has been challenged under state open-records laws. Finally, seven libraries were questioned about the uses and problems of on-line circulation systems in an actual library situation. Three responded: Albany Public Library, Liverpool Public Library, and Milwaukee Public Library. The study includes an annotated bibliography of forty-six items, which have been indexed by subject.

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I. INTRODUCTION

Once data has been entered into a computer, information can be peeled off for secondary use. The purpose of this paper is to investigate the application and problems of on-line circulation systems as a source of in-house secondary information. Depending on the information collected when a patron registers, records could theoretically be sorted by various characteristics or combinations of characteristics for statistical purposes, mailing lists, etc.

One question to be answered was, considering the relatively recent development of these systems, whether they were sufficiently sophisticated to produce such reports; another was what uses the libraries were making of their system's report-generating capabilities.

The security of the circulation records was the third part of the problem. On the one hand is the ability to search the data base by a combination of access points, with the rather disturbing implications that has for personal privacy and the right to read. On the other hand, the systems by their very nature would seem to offer more confidentiality: one would assume that it is more difficult to figure out the

password to a computer file than to pull the card out of a book pocket. Therefore, with the problem of confidentiality of patron records, the first line of defense to be investigated was the safeguards offered by the systems themselves. The second was the safeguards offered by law. The third was cases where both of these safeguards had been challenged, whether successfully or not, in order to determine what the weak points might be in either system design or the law.

The study was limited to public libraries; the uses of circulation records in themselves as a guide for collection development also falls outside the scope of this paper.

The study can be considered as two parts. For the first, I conducted a literature search on the systems and their capabilities and security features, the legal grounds for confidentiality of library records, and instances where that confidentiality had been challenged, using the indexes listed below.

INDEX	SUBJECT HEADINGS
Index to Legal Periodicals	Documents and records Freedom of information Libraries Right to read
Index to Library Literature	Automation of library processes- Circulation procedures Automation of library processes- Public libraries Censorship Privacy, Right of

INDEX	SUBJECT HEADINGS
Library and Information Science Abstracts	Computerized circulation control Security: personal data: data bases
Information Science Abstracts	Censorship Circulation systems Security, Data base
Resources in Education	Censorship Library automation Library circulation

As the information on the systems tended to be too general, I requested information from the system vendors. Dean Richard Halsey of the School of Library and Information Science, SUNY Albany, was consulted for preliminary information on legal matters, and Ralph R. Chapin, III, of K&H Computer Products, was consulted for background information on software design.

The second half of the study was more concerned with problems and secondary uses of computerized patron records in an actual library situation. Originally, the libraries for the study were to be limited to the Upper Hudson Library System, for reasons of practicality. As only two libraries in the system have automated circulation, and they own the same system and share a common data base, it was necessary to expand the area to be considered. The libraries and systems surveyed are:

Albany Public Library
Albany, New York
LIBS 100 (CLSI)

East Meadow Public Library
East Meadow, New York
Decicom

Lexington Public Library
Lexington, Kentucky
CLASSIC (Cincinnati Electronics)

Liverpool Public Library
Liverpool, New York
Gaylord

Milwaukee County Public Library
Milwaukee, Wisconsin
Plessey Module 4

Northland Public Library
Pittsburgh, Pennsylvania
ULYSIS (Universal Library Systems)

San Jose Public Library
San Jose, California
SCI (Systems Control Inc.)

Witchita Public Library
Witchita, Kansas
ALIS (Data Phase)

II. SYSTEMS AS A SOURCE OF SECONDARY INFORMATION

> The newer, 'packaged' automated circulation systems offer libraries the capacity to produce a variety of reports and statistics designed to provide insight into ... which type of library patron borrows most often, which branches are busiest, etc. In theory, statistics garnered through the system can be used to guide libraries ... In practice, however, ... the reports and statistics capabilities of these automated systems have yet to have an impact on these library operations.[1]

Matters have changed little in the six years since the above was written. A library may purchase a circulation system in part for its report-producing capabilities, but in most cases this is seen as a future application. In addition, some of the systems themselves either have not yet developed the necessary software or are still at a relatively unsophisticated level. The available literature was less than helpful, consisting of three reviews of available systems, all somewhat out-of-date, and, for the most part else, of announcements when a library purchased a particular system. A summary of this literature follows; more detailed information, provided by the companies

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[1]Paula Dranov, Automated Library Systems, 1977-78 (White Plains, N.Y.: Knowledge Inductry Publications, 1977), p. 75.

themselves, can be found in the appendix.

Cincinnati Electronics has developed software capable of generating reports. Print-outs include course/faculty directories and circulation statistics by course/faculty member or by borrower type, location, and terminal. The Lexington Public Library purchased their CLASSIC circulation system to monitor circulation and produce overdue notices; the library hopes to use the information gathered by the system to determine locations for future branches. Cincinnati Electronics also has marketed the JRL-1000 terminal as a circulation system, but the purchasing library must provide the software.

The LIBS 100 system, developed by CLSI, automatically compiles reports and patron statistics. One report consists of the number of items charged out at each branch, by the item's statistical class, patron statistical class, interlibrary borrowing class, and reciprocal borrowing class. The system can also produce statistics of circulation by borrower type. It supplies over twenty patron categories; the library designates which categories and report types it will be using. One purchaser, the Atlantic County Library, is in the process of reregistering its patrons using an expanded form that includes questions on occupation and geographical location. At some future time, the library

intends to use this information to find out what categories of people and which municipalities are using the library.

Data Phase claims that its ALIS (Automated Library Information System) II/S has the software to provide complete circulation reports.[2] It provides over thirty-nine patron categories, and can give circulation statistics by borrower type, location, and terminal.

Decicom's system, at least as of 1979, was still in the developmental stage; it is supposed to provide sixty-four patron categories.

The East Brunswick Public Library developed its own system, using the municipal computer; the system is now commercially available. It produces a monthly list of patrons and end-of-month patron usage reports broken down by zip code to indicate use by residents of neighboring communities.

Gaylord's system consists of a minicomputer in the library linked to the host computer at company headquarters in Syracuse. The main computer generates all reports and notices, providing weekly alphabetical listings of all active borrowers and a monthly updated borrowers' register, on microfiche. Four thousand, five hundred patron categories are available for statistical purposes;

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[2] "New Data Phase Circulation System Designed for Small Libraries," Library Journal 106 (May 15, 1981), p. 1021.

a library may add more categories. The reports are mailed to the library from Syracuse; the system does not have the software to produce printed reports in the library itself. The Liverpool Public Library intends to use its Gaylord system to produce reports of users broken down by zip code in order to determine which of its branch libraries are most heavily used, as a guide for planning future expansion.

The IBM System/7 also consists of a dedicated computer on-site which transmits records of daily transactions to the host computer. All reports are printed-out by the host computer. The purchasing library must write or buy the programs to operate the systems, and the same holds true for SPC's Checkpoint system. The library has to decide what reports it wants when it commissions the programs, as all reports are produced by a central computer and Checkpoint itself does not provide software. While this allows the library to tailor a system to its own particular needs, it should be noted that a bare-bones system will cost approximately $20,000 and take three months to write; a truly sophisticated version is likely to take about a year to write and will cost about $80,000.[3]

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[3]Ralph R. Chapin, III, Personal communication, April 12, 1982.

Integrated Library Systems is marketing a system originally developed by the Lister Hill National Center for Biomedical Communications. Two versions are available, one on a DEC LSI 11/23 microcomputer, and a larger version on any one of three minicomputers. "...(P)atrons and items can be identified by a wide range of entry points,"[4] although the authors do not mention what these are or what use the library can make of them. Marcus and Boss go into slightly greater detail for Ringgold's Nonesuch System. Based on a microcomputer, it can produce lists and compile statistical summaries done in batch mode when the system is not in use for circulation.

Another batch system, Plessey Stored Program Control Systems, was marketed by Plessey. Level I was strictly a batch system, no records being kept on-line. Level II included disc storage. It is being superceded by Plessey's Module 4, an on-line system that can produce statistics on numbers of borrowers registered and number of currently active borrowers, broken down by branch.

System Control Incorporated's SCI includes a printer to produce letters and notices to patrons,

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[4] Deanna Marcus and Richard Boss, "Information Technology," Wilson Library Bulletin 55 (June 1981), p. 765.

management reports, and statistics, in-house. Reports include circulation by patron category, which can be broken down by patron residence code to identify patrons using libraries outside their own area; all reports can be broken down by branch or terminal location as well. The system provides two hundred fifty-five patron categories.

Universal Library Systems' ULYSIS provides over eighteen patron categories, and can generate circulation statistics by agency, terminal, type of patron, and zip code. Another Canadian system, developed by Geac, seems to be limited in application to academic libraries, as its report capabilities are apparently limited to course/faculty directories. A second "academic" system, developed by the University of Connecticut-Storrs, can generate statistics by borrower status, which might also be limited in its application to public libraries.

The final system to be mentioned technically falls outside the scope of this paper, as it is in use in a special library, the Rohm & Haas research library. However, it demonstrates what secondary uses can be made of patron records, should the library desire to do so, and admittedly should the library have the money and technology available: the System 2000 requires a mainframe: an IBM 370, a Univac 1100, or a CDC 6000.

The system generates reports on statistics of usage volume, used by the library to distribute operating costs, lists of overdues, accessions, shelf lists by library, new acquisitions, books used by each employee, and all uses of a given title. A subsystem, Periodical Circulation Routing Control, creates files containing employee name, number, location, department, building and room number, salary, travel allowance, division and subdivision codes, and job level indicator. Among other things, information is "peeled off" from the file to produce mailing labels for use in repetitive mailings, i.e., the library's bulletin, reports, and SDI. It is also used to print lists and mailing labels for authorized recipients of restricted material. The lists can be sorted by any of the entry points listed above; according to the librarians, "the lists are particularly useful because the information is current and can be tailored to user needs."[5]

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[5]Phoebe Rosenburg and Barbara G. Prewitt, "Applications of System 2000 Data Base Management Software at Rohm & Haas Company Research Library," The Information Age in Perspective, Proceedings of the 41st ASIS Annual Meeting, Vol. 15 (White Plains, N.Y.: Knowledge Industry Publications, 1978), p. 276.

III. CONFIDENTIALITY OF PATRON RECORDS: SYSTEM SECURITY

The ability to search patron or item files by multiple access points has great potential for abuse should an unauthorized person gain access to the data base. Some safeguards are offered by the systems themselves, and libraries can also claim a certain amount of protection under the law. In spite of this, there have been challenges to the concept of confidentiality of patron records, a small but disturbing amount of them successful.

The American Library Association strongly believes that the first line of defense is system design.

> Roger L. Funk, assistant director of A.L.A.'s Office for Intellectual Freedom ... argued for a design of systems that protected this individual right to privacy, purged records identifying users as soon as feasible, and retained only essential information in historical files ...
>
> Hugh Atkinson, director of the University of Illinois Libraries, strongly supported this view, stating that system design should not allow search-by-patron, e.g., to discover all the titles in use by a given user ...[6]

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[6]Barbara Evans Markuson, "Granting Amnesty and Other Fascinating Aspects of Automated Circulation," American Libraries 9 (April 1978), p. 210-211.

This, as the vicar would say, is a counsel of perfection. Few if any of the systems meet these standards, although most include some checks to make snooping difficult. While ALIS allows search-by-patron, the list of items charged to a borrower is only available by CRT display. CLASSIC, LIBS 100, and Decicom provide access to information on items charged to individual patrons, but a password is necessary. Gaylord generates a list, displayed on the CRT, that includes the patron's name and identification number, the item title, and due date; to call up this information, the operator must obtain the patron's identification number from the microfiche list, as patron records are retained on-line only by identification number. Plessey Module 4 provides access by patron name and address, going on the assumption that the only queries on material charged to individuals will be done by the library staff. UTLAS CIRC provides access by patron name and number. ULYSIS has what seems to be the tightest security: there is no access by patron name except for overdue items.

Other systems are less security-conscious. Geac can display or print-out lists of the material charged to a specific borrower. SCI allows the record of material to be retrieved by patron number or by a code derived from the patron's name and address. The Univer-

sity of Connecticut system will print-out a list of items charged to a patron on request; IBM's System/7 automatically prints-out a daily circulation report that gives the item title, the borrower's name, and the due date.

IV. CONFIDENTIALITY OF RECORDS: THE LAW

The records exist, although the degree of difficulty of accessing the information they contain varies from system to system. Until systems are developed consistent with the design criteria recommended by Funk and Atkinson, maintaining confidentiality of the records will be a problem. The A.L.A.'s "Policy on Confidentiality of Library Records" suggests that

> 1) a library should have a formal policy 'which specifically recognizes its circulation records and other records identifying the names of library users with specific materials to be confidential in nature,'
>
> 2) these records should not be made available to any government agency at any level of government unless the agency has a subpoena,
>
> 3) the library should 'resist the issuance or enforcement of any such ... subpoena until such time as a proper showing of good cause has been made in a court ...'[7]

However, the policy statement has no legal standing.

Legal protection for privacy of library records is found primarily in the Bill of Rights: three strands

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[7] Judith F. Krug and James A. Harvey, "Intellectual Freedom," American Libraries 11 (Dec. 1970), p. 1026.

that emenate from the First, Fourth, and Ninth Amendments, and the penumbrae of the First through the Eighth Amendments.[8]

While the First Amendment does not specifically guarantee a right to read, it does guarantee the right to speak or publish, which pre-supposes readers and their right to receive what is published, as was established by a unanimous Supreme Court decision in Lamont v. Postmaster General.

> The recognition of a first amendment right to read and a finding that this right is unduly burdened by disclosure of library circulation records provide an initial basis for the imposition of constitutional limitations on access to library borrower lists.[9]

In addition to direct violation of the First Amendment, a case on confidentiality of patron records could be decided on the grounds that the threat of subsequent punishment may prevent the exercise of First Amendment rights even if prior restraint does not exist: the "chilling effects doctrine."

> ... the almost intuitive approach of the Court to first amendment

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[8]R.D. Woodson and Ricki Lewis Tannen, "Federal Constitutional Privacy and the Florida Public Records Law: Resolving the Conflict," University of Florida Law Review 23 (Spring 1981), p. 317.

[9]Mark K. Wilson, "Surveillance of Individual Reading Habits: Constitutional Limitations on Disclosure of Library Records," The American University Law Review 30 (Fall 1980), p. 279.

> litigation provides substantial support for the argument that government surveillance of individual reading habits would be found unconstitutional. In finding a chill, the Court considers not only the actual impact of government action but also its potential for abuse. In this light, the spectre of government monitoring of personal thoughts, and its potential for wholesale censorship of thought, would undoubtedly sway the Court to find that government surveillance of library records is an unconstitutional burden on the First Amendment right to read.[10]

Individual freedom from government surveillance is also protected by the Fourth Amendment, which provides protection against unreasonable search and seizure. The original concept of privacy included only common law property, but in Katz v. United States, the Supreme Court ruled that the Fourth Amendment was intended to protect people, not property, and constitutional protection was extended to the individual's expectation of privacy.

In company with the Fifth Amendment, the Fourth rules that officials cannot search and seize "mere evidence." Investigations not concerned with a specific person or persons can be found in violation of the Fourth Amendment "expectation of privacy" as well as chilling the First Amendment freedoms of non-lawbreaking readers.[11]

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[10] Ibid., p. 294.

[11] Ibid., p. 311.

The Ninth Amendment stipulates that personal rights which have not been mentioned in the Constitution are not to be considered to be denied or disparaged; the case of Griswold v. Connecticut established that "as privacy is incident to several constitutional goals, it should be declared a goal in itself."[12] The Fourteenth Amendment guarantees an individual's right to privacy in the exercise of fundamental rights.

Finally, there is the protection offered by the "penumbra" effect, developed by Justice Douglas in Griswold:

> ... under various interpretations ... the Court has found that individual decisons of an intimate nature relating to bodily integrity and autonomy are to be given constitutional protection. To date, this doctrine has protected marriage, procreation, contraception, child-rearing, and education,[13]

and Woodson and Tannen believe the penumbra effect would also ensure the confidentiality of borrower records.

A possible threat to confidentiality has been posed by the passage of a number of open-records acts. However, library records may be included in the catagory of records ruled exempt. The sixth exemption to the

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[12]Stephen Harter and Charles Busha, "Libraries and Privacy Legislation," Library Journal 100 (Feb. 1, 1976), p. 476.

[13]Woodson and Tannen, Op. cit., p. 318.

to the Federal Freedom of Information Act (FOIA) covers "'personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'"[14]

On the state level, California's Public Records Act permits blocking access to records if their disclosure would constitute an unwarranted invasion of privacy. The Georgia Open Records Act also rules that records "'the disclosure of which would be an invasion of personal privacy'"[15] are exempt. In the case of Ector County Library v. Odessa American, the Texas Attorney General issued a formal opinion that library patron records were exempt from disclosure under the Texas Open Records Law "'... as information deemed confidential by constitutional law.'"[16]

On a more positive level, the Privacy Protection Act of 1980 covers the search and seizure of docu-

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[14]Frank H. Kronman, "The Privacy Exemptions to the Freedom of Information Act," The Journal of Legal Studies 14 (Dec. 1980), p. 729.

[15]Dennis P. Quarles, "Informational Privacy under the Open Records Act," Mercer Law Review 32 (Fall 1980), p. 393.

[16]Rebecca Mueller, "Texas Decision Strengthens Library Confidentiality," American Libraries 6 (Sept. 1975), p. 470.

ments held by an innocent third party. Searches and seizures that jeopardize the First Amendment rights of that third party are specifically prohibited. The act also requires that a subpoena be obtained in order to request access to records.

California, in addition to the exemptions permitted to its Public Records Act, adopted an amendment on the individual's inalienable right to privacy. This amendment proscribes "governmental snooping," the unnecessary collection and retention of personal information by government and business, and "'the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose, or the disclosure of it to some third party ...'"[17]

In March 1982, the New York State Senate passed An Act to amend the civil practice laws and rules, in relation to library records, introduced by Assemblyman Steven Sanders, sponsored by Sen. Caesar Trunzo, and supported by NYLA, NYCLU, and the New York State Lawyer's Association. The justification of the bill states that

> The library, as the unique sanctuary of the widest possible spectrum of ideas, must protect the confidentiality

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[17] Guy J. Sternal, "Informational Privacy and Public Records," Pacific Law Journal 8 (Jan. 1977), p. 29.

> of its records in order to insure its readers' right to read anything they wish, free from the fear that someone might see what they read and use this as a way to intimidate them. Records must be protected from the self-appointed guardians of public and private morality and from officials who might overreach their constitutional prerogatives. Without such protection, there would be a chilling effect on our library users ... because they fear the potantiality of others knowing their reading history.[18]

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[18]New York State, New York State Assembly Memorandum (1981).

STATE OF NEW YORK

5953—C

Cal. No. 120

1981-1982 Regular Sessions

IN ASSEMBLY

March 3, 1981

Introduced by M. of A. SANDERS—Multi-Sponsored by—M. of A. BIANCHI, BRANCA, CONNERS, COOKE, D'ANDREA, DAVIS, DUGAN, FARRELL, FELDMAN, FERRIS, FINNERAN, FLANAGAN, GOTTFRIED, GRANNIS, HAGUE, HARENBERG, HEVESI, HIRSCH, HOCHBRUECKNER, HOYT, JACOBS, KOPPELL, KREMER, LAFAYETTE, LEVY, LIPSCHUTZ, MURTAUGH, NADLER, NEWBURGER, NINE, PASSANNANTE, PROUD, RYAN, SCHIMMINGER, SERRANO, SIEGEL, SILVER, SMOLER, E.C. SULLIVAN, VIGGIANO, WEINSTEIN, YEVOLI—read once and referred to the Committee on Governmental Operations—reported and referred to the Committee on Rules—Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules—amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading—recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2—reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to library records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil practice law and rules is amended by adding a new section forty-five hundred nine to read as follows:

§ 4509. Library circulation records. Records related to the circulation of library materials which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD2-25-25-111C

library and shall be disclosed upon request or consent of user or pursuant to subpoena, court order, or where otherwise required by statute.

§2. This act shall take effect [illegible]

V. CONFIDENTIALITY OF LIBRARY RECORDS: THE CHALLENGES

As the previous discussion of confidentiality laws would indicate, protecting patron records from over-zealous officials and guardians of morality has been a problem, and one not always solved to the library's advantage. The laws do not always provide the protection that they seem to offer.

The protection offered to patron records under the First Amendment might be objected to under the "right-privilege distinction":

> ... when a government service is gratuitive, denial or impairment of access to that service cannot be an unconstitutional abridgement of rights.[19]

However, Wilson feels that it is unlikely that the Court would use this line of reasoning.

While the various federal privacy acts would seem to prohibit access to records, they contain several weak points. First, the FOIA is the parent act and thus takes precedence; if a record is available under the FOIA, that is, not in a category covered by the nine exemp-

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[19] Wilson, Op. cit., p. 298.

tions, access must be granted even if the Privacy Act would forbid access. In the case of the sixth exemption to the FOIA, which has been claimed to cover patron records, the courts have had difficulty in deciding what constitutes a "clearly unwarranted invasion of privacy." The majority of cases have been decided according to the balancing test set forth in Getman v. NLRB.

> The District Court for the District of Columbia ... held that Exemption Six requires a court to balance the right of privacy of affected individuals against the right of the public to be informed and that the 'clearly unwarranted' language of the exemption instructs the court to tilt the balance in favor of disclosure.[20]

In Robles v. Environmental Protection Agency, the Fourth Circuit Court decided against following the Getman balancing test, holding that the extent of the invasion of privacy should be the determining factor. The Supreme Court, however, in Rose v. Dept. of Air Force, did adopt the balancing test. The Privacy Act itself contains a disquieting exemption. Any law enforcement agency or agency claiming to collect intelligence for law or national security purposes can, with a sub-

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[20] James M. Gorski, "Access to Information? Exemptions from Disclosure under the Freedom of Information Act and the Privacy Act of 1974," Willamette Law Journal 13 (Winter 1976), p. 752.

poena, obtain access to requested records.

The state open-records acts, in spite of their exemptions, generally provide little if any statutory protection against public disclosure of records regarding First Amendment activity.

In 1969 and 1970, U.S. Treasury Department agents, without subpoenas, requested information on borrowers of "militant or subversive" books and books about explosives from three public libraries: Atlanta, Minneapolis, and Milwaukee. The librarian at Atlanta Public was requested to flag certain categories of books The request was denied, and the library's board endorsed the decision. A similar policy was enacted by Minneapolis Public's board. At Milwaukee Public, the agents asked to see the call slips for reference books on explosives. The librarian refused to turn over the slips on the grounds that information obtained from patrons was privileged. The following day, the city attorney called the library and ordered that the records be released, on the grounds that "there were no private records in the public library," and that according to Wisconsin law, public records were

> all 'written memorials made by a public officer within his authority where such writings constitute a convenient, appropriate, or customary method of discharging the duties of his office' ... In reaching a determination so based upon a balancing of the interests involved,

> the trial judge must ever bear in mind that public policy favors the right of inspection of public records and documents ...[21]

The library released the records. The Treasury Department's inquiries did stop after the A.L.A. and Sen. Sam Ervin publicized the three cases.

In some few cases, records have been opened voluntarily. The director of the Jefferson County (Colorado) Library notified the F.B.I. that Hinkley had been a patron; both the F.B.I. investigators and a reporter from a national magazine were given access to the records.

Georgia, in spite of a long history of high legal regard for personal privacy, has had recent court decisions limiting the privacy exemptions to its open-records act. In Northside Realty Association v. Community Relations Commission, it was decided that

> the holder of the records ... bears the burden of persuading the fact-finder as to the reasons why the records should not be released, including the invasion of privacy defense ... Adding to the difficulty of the record-keeper's task is the fact that a record-keeper, as defendant, will usually be arguing for an interest that exists outside himself ... arguing for a right of informational privacy that exists in the subjects of the records, subjects who are frequently not even parties to the action.[22]

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[21]Judith F. Krug and James A. Harvey, "Intellectual Freedom," American Libraries 1 (Sept. 1970), p. 752.

[22] Quarles, Op. cit., p. 401.

In the case of Doe v. Sears, the determining factor was not the nature of the records as public or private, but the nature of the office that held them.

> ... The court merely assumed that because the records were created in a public office, they had to be public records.
>
> ... the import of the holding in Sears is that the plaintiff in a disclosure suit is not required to prove that the records he is seeking from a public office are public records. The court makes that assumption for the plaintiff ... the affect ... is to cast an additional pleading burden on the defendent, who must now distinguish between public and private records created in a public office.[23]

With Iowa's Open Records Statute, a court case was unnecessary. The statute requires that all state and local government agency records be available for examination by any citizen or for publication in the press; public records are defined as

> 'all records and documents of or belonging to this state or any county, city, town, township, school corporation, political subdivision, or tax-supported district ... or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.'[24]

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[23]Ibid., p. 403.

[24]Wilson, Op. cit., p. 277.

The exemptions do not include library records, which was reinforced by the Iowa Attorney General's ruling that library records must be opened to inspection in the case of Sheriff's Department of Muscatine County v. Musser Public Library.

The Texas Open Records Act was invoked by the city editor of the Odessa American in a request for the circulation records of Ector County Library's Fine Arts Collection. No grounds or reasons for the request were given. The librarian refused to open the records and was supported by the Ector County Commissioners Court. The court requested a formal opinion from the Attorney General; as mentioned above, he ruled that, while library records and patron confidentiality were not specifically protected under Texas law, they were protected under the First Amendment.

More recently, the Moral Majority requested a list of all public school districts and employees who had charged out the film Achieving Sexual Maturity from the Washington State Library. The State Librarian refused to release the circulation records, basing his decision on the First Amendment and on the Privacy of Library Circulation Records Policy, which had been adopted by the State Library Commission in 1972. The Moral Majority then sued the library on the grounds that

the records were subject to the state's Public Disclosure Act. The Attorney General argued successfully that circulation records fell under an exemption to the disclosure act, and further that there was no conflict between the library's policy and the act. The suit was dismissed with prejudice.

While the state open records laws seem to pose the biggest threat to confidentiality of library records, there have been some cases setting equally dangerous precedents on other grounds. For example, the U.S. Court of Appeals, Ninth Circuit, decided in U.S. v. Giese that a defendent's reading habits are admissable as evidence in criminal cases "where they satisfy ordinary standards of relevance and prejudice."[25] A dissenting opinion was filed by Justice Hufstedler, who held that "'no inference can constitutionally be drawn about the character of book readers on the basis of the books they read.'"[26]

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[25] "Evidentiary Use of a Criminal Defendent's Reading Habits and Political Conversation: United States v. Giese," Harvard Law Review 93 (Dec. 1979), p. 423.

[26] Ibid., p. 423.

VI. SURVEY OF THE LIBRARIES

The libraries in the survey were asked the following questions:

1. What information is collected when a patron fills out a request for a card?

2. What uses are made of circulation records, i.e., reports by geographical area or age group, mailing lists, etc.?

3. Does the library have a formal policy governing access to patron records? Besides the staff, does anyone else, for instance, state auditors, use or ask to use the records? What safeguards does the system offer?

4. Do you foresee any future difficulties in maintaining confidentiality of patron records.

The libraries' answers are given in order of response.

Unfortunately, East Meadow Public Library, Lexington Public Library, Northland Public Library, San Jose Public Library, and Witchita Public Library did not return their questionnaires in time to be included in the survey.

Albany Public Library
Albany, New York

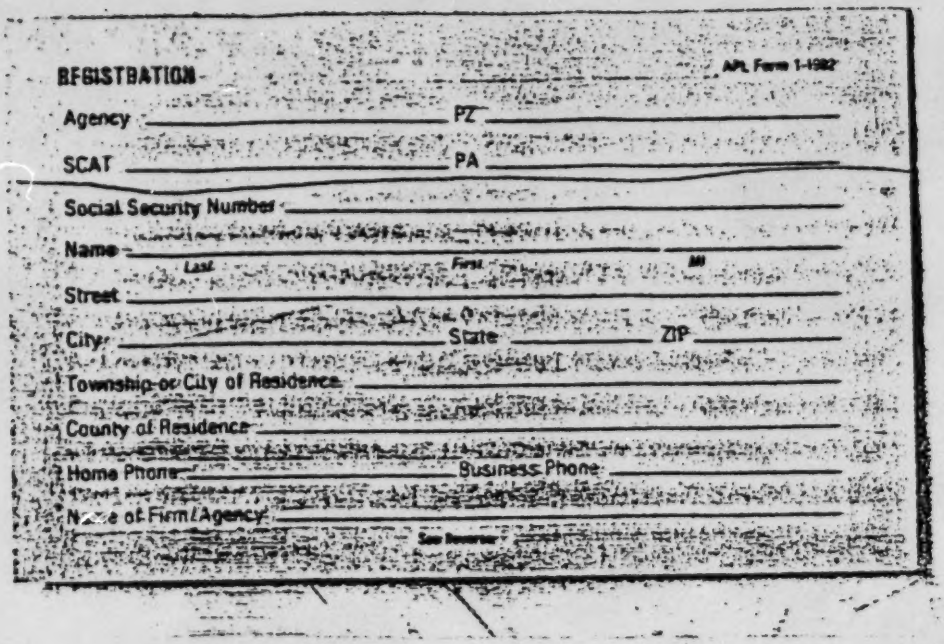
LIBS 100
CLSI

Interview with Mr. William O'Connor, Assistant Director:

1. (See example of registration form)

The Social Security number is optional. It is used because Albany has a large transient population of college students, and the Social Security number is the most efficient way to identify them. All the information requested on the form is keystroked into the data base; the age range, like the Social Security number, is filled in at the patron's discretion. The two digits following each range of dates is coded for statistical purposes.

Albany Public uses a declining level of specificity. City residents are coded by two digits derived from the zip code in addition to the age range code. Outside Albany, the library wanted to know how many residents of Bethlehem, Colonie, and Guilderlands, which have the three next largest libraries, were using Albany Public, and these three cities each have a two-digit code. The rest of Albany County is assigned one two-digit code. In Rensselaer County, Troy has been assigned its own code; the city is not broken down by zip code areas, however. The rest of the county is again lumped together under one code. Of the other counties, Schenectady, Saratoga, and Green each



REGISTRATION APL Form 1-1982

Agency _____ PZ _____

SCAT _____ PA _____

Social Security Number _____

Name _____
Last First MI

Street _____

City _____ State _____ ZIP _____

Township or City of Residence _____

County of Residence _____

Home Phone _____ Business Phone _____

Name of Firm/Agency _____

See Reverse

Name of School _____ Year of Graduation _____

Parents' Address _____

STAFF

ID checked by _____ Date issued _____

Please Check One Birthdate Range Below

☐ 1903-07 01	☐ 1933-37 17	☐ 1963-67 13
☐ 1908-12 02	☐ 1938-42 08	☐ 1969-72 14
☐ 1913-17 03	☐ 1943-47 09	☐ 1973-77 15
☐ 1918-22 04	☐ 1948-52 10	☐ 1978-82 16
☐ 1923-27 05	☐ 1953-57 11	☐ 1983-87 17
☐ 1928-32 06	☐ 1958-62 12	☐ 1988-92 18

I WILL BE RESPONSIBLE FOR ALL USE OF MY LIBRARY CARD.
($1.00 REPLACEMENT CHARGE FOR LIBRARY CARDS)

_____ _____
7th Grade or Younger/Parents' Signature *Your Signature*

PATRON REGISTRATION FORM
ALBANY PUBLIC LIBRARY

have a code. Beyond that level, one code is assigned to "other New York state."

2. CLSI generates a Patron Circulation Statistics Report, which breaks down the total monthly circulation by items per each patron category (geographical area subdivided by age range). The flaw is that there is no way of knowing how many patrons are contained in each patron category.

There is also no capability to manipulate the software to produce mailing lists. The entire record for each patron (status, phone numbers, etc.) prints out.

3. Inquiries on patrons are restricted as there are no public terminals and the operator must have the patron's library card number or his/her name/address code.

Unless the patron has overdue books, the system maintains no display on the CRT or the print-out terminal of the titles charged to a particular borrower, althouggh the information is of course stored in the computer. When a book becomes two weeks overdue, however, a patron inquiry will produce a record indicating that the patron's status has changed to delinquent and listing the bibliographic information on the overdue book.

The library's policy is to grant access to records

only under court order. This has happened once since they went on-line. The only field that could be accessed was the last activity date field, which indicates only when the card was last used, not if it was used at the main library or one of the branches.

While a manual system with sign-out cards maintained records of who had checked out a book as long as the book and its card were on the shelf, the automated system does not maintain a permenant record. Assuming one had the co-operation of the library, in providing the name-address code and the terminal, an inquirer could look up a book and see if the patron's number is in that record, but this capability ceases when the book is returned. Upper Hudson member libraries with CRTs and couplers can tie into Albany Public's data base by means of a dedicated port, but they can only do title inquiries: author, call number, the number of copies, and whether they are in the stacks or on hold.

4. Owing to this capability, plus the passage of the Library Records Confidentiality Act, the library does not foresee any future problems.

Liverpool Public Library
Liverpool, New York

Gaylord
Gaylord Library Systems

Questionnaire answered by Margaret A. Trinca, Assistant Director, Support Services:

1. Liverpool Public's registration form follows.

No. _____

_____ Expires _____

DO NOT WRITE ABOVE THIS LINE

I apply for the right to use the Library, and agree to comply with all its rules and regulations, and to give immediate notice of any change of address.

Sign Full Name _____

Home Address _____

_____ Zip _____ Phone _____

Business Address _____ Phone _____

GAYLORD 125 PRINTED IN U. S. A.

2. Other uses of circulation records are a yearly breakdown (numeric only) by census tract/age of people registered, and a list of people using the library.

3. Policy is that records are confidential. Once an item is returned, connection with the patron is eliminated from the computer files. Microfiche of patron records are available to staff only and are unavailable upon receipt of updated fiche.

4. No. With increased use of main frame computers off-site, access is more involved (due to time delay) than maintaining on-site manual records.

Milwaukee Public Library
Milwaukee, Wisconsin

Plessey Module 4
International Computing Company

Questionnaire answered by Robert M. Pfeiffer, Head of Circulation:

1. When a patron fills out an application for a library card, the library asks for the person's name, address, zip code, city, phone number, occupation, birthdate, signature, and name of employer or school. In addition, patrons are asked whether they are attending grade school, high school, college or technical school, and what was the highest grade attended at a regular school. The library also asks for the spouse's name. The birthdate is extremely important to the operation, as the library uses it many times to determine if it has a forged library card application.

2. The circulation statistics are broken down several ways: by agency and then by the Dewey Decimal Classification; subdivided by ownership of the material, i.e., Milwaukee Public Library, Milwaukee County Federated Library System, or suburban owned library material. The second statistical report is broken down by agency. From this report the library gets a geographical listing of all the borrowers who are using a particular agency and the number of items borrowed,

broken down by juvenile and adult.

Milwaukee Public does occasionally use its registration records to make mailing labels for such things as Business Information Services' Newsletter. It eventually would like to use its circulation and registration records to develop a profle of library borrowers.

3. The Milwaukee County Federated Library Service has adopted the A.L.A. policy regarding circulation records. All circulation and registration records are considered confidential and will not be given out uhless they are subpoenaed. Once a patron has returned his or her book, the library card number is removed from the circulation record and there is no way that a patron can be traced to an individual title.

4. The library does get requests each year from the suburban officials who it serves, requesting access to the circulation records for the purpose of contacting their residents so that they can tell them how much their use of the Milwaukee Public Library is costing the individual suburb. This is a yearly problem for the library. Other than that, there have been no serious difficulties since the automated circulation system was installed.

V. CONCLUSION

Whether or not an automated system will have software capable of deriving secondary information from circulation records seems to depend on the market for which the system has been developed, not how long the system has been in existence. Those intended primarily for public libraries, such as CLSI's LIBS 100, make less use of the patron records than systems designed for academic or special libraries. This makes sense. A public library is not apt to have the financial or technological resources of an academic or special library; what a public library can do when it does have access to a mainframe is exemplified by East Brunswick's system. Nor is a public library apt to require the instant timeliness and versatility that a special library serving a research facility must have.

A majority of libraries seem to regard the report-generating capabilities of their particular system as something to be exploited in the future. This may be due to the fact that, until the library has finished its conversion process, there may be insufficient primary information to work with, and, as mentioned above, most of the literature deals with libraries that have just recently purchased a system. Those

that have been on-line for some time do seem to be making use of secondary information derived from their circulation records; in the case of Albany Public, the library would like to make more use of secondary information than the system allows.

As with report-generating capability, security varies from system to system. One common safeguard for confidentiality is to link a patron to an item only when the item becomes overdue; another is to require a password or series of passwords for access to the files. It is interesting that the one system designed by a public library, East Brunswick's, deliberately did not program access to current circulation files by patron, and that Milwaukee Public, which has had confidentiality problems in the past, chose a system that eliminates any chance that a patron can be connected to an item after it has been returned.

The more security offered by the system the better. Even armed with a court order, one cannot obtain records that do not exist. Legal protection of the confidentiality of circulation records can be a sometime thing. Failing a system designed to not allow access to records, the best protection for a library seems to be a law specifically defining circulation records as private. Considering the varying judicial interpretations of exemptions from the FOIA and state open-records laws, a library would be on dangerous ground if it had to use those exemptions as

a basis for any claim of confidentiality of its patron records.

APPENDIX

Circulation Control System
OCLC
(System still in developmental stage)

Security: The library choses its authorization levels and assigns a level to each activity; staff members receive an authorization level appropriate to the activities their jobs entail.

The authorization levels are: check in/ check out, access to patron fine information, changing existing records, changing operating procedures, and overriding alert mechanisms

Patron records are accessible by name and identification number.

Reports: System activity: statistical summary of charges and discharges, renewals, holds, queries, system overrides, financial information, records added and deleted, number of patrons, number of notices produced.

Special conditions: lists items requiring special attention.

Audit: financial information.

Call number: transaction by call number.

New patron: list of patrons new to library, during specified time period.

Patron: list of all registered patrons.

Security: Inquiry to patron file is available by patron name or patron identifier (bar code label). Display of patron information can be followed by display of overdues or password controlled display of all items currently charged to patron.

Display of the reserve list for any title includes patron names; this list is password controlled.

Reports: General circulation statistics (done in batch mode):
year-to-date circulation by branch and system total;
year-to-date circulation by catagory of item;
year-to-date circulation by catagory of patron;
year-to-date circulation by broad call number catagories;
year-to-date circulation by date of charge;
titles with year-to-date circulation over value of x times (x to be set by library).

Collection management statistics (done in batch mode):
number of titles and copies owned by branch and system by catagory of material;
items added/withdrawn during calender year by catagory of material;
copies currently missing/lost or overdue for last six months.

CIRCULATION SYSTEM
THE LIBRARY, EAST BRUNSWICK, N.J.

Security: Patron file records accessible by staff are:
patron record- name address, telephone, date registered, last activity date, number of items out, number held, number on reserve, cumulative overdue fines, patron status;
patron overdue list- items overdue in date sequence;
patron reserve list- items held and reserved, in date sequence.

Current circulation files by patron are not available for display. While the information is contained in the system, access to it was not programmed by design, in order to protect privacy. Past circulation records are deleted fom the patron file at check-in.

An item listing will display the card numbers of patrons who have or had checked out an item. This cannot be accessed from the patron file, unless the item has become overdue.

The record files listed above are available to all staff. The system is not available for public use.

Reports: Reserved items for the week, as a back-up for the on-line records;
overdue items in shelf list order for a specific time period, so that shelves can be checked before overdue notices are mailed;
overdue notices;
annual overdue list in patron number sequence for items out for over a year;
patron list in alphabetical order;
patron number list in numerical order for cards not used within last three years- done annually to delete inactive patron cards;
patron list of unpaid overdue fines, in alphabetical order;

analysis of use- from random list of patron numbers in a given range (now done manually but could be generated by the computer);
numerical reports- daily circulation, monthly patron registration, number of items outstanding from a particular time period, number of patrons registered, etc.

UTLAS CIRC
UNIVERSITY OF TORONTO
LIBRARY AUTOMATION SYSTEMS

In December 1981, UTLAS decided to discontinue offering its existing circulation system, primarily due to advances in technology that had not been included in the original system. They are currently investigating a return to the minicomputer, and hope to have a product available within a year.

THE GEAC LIBRARY INFORMATION SYSTEM
GEAC COMPUTERS INTERNATIONAL

Security: No job running on the system can encroach on the memory partition of another job. The operating system contains a password encrytion routine that prevents users from finding out other users' passwords. The system can be started and stopped only by an authorized password, and a series of levels of authorization have been built into the operating system. The software controls the range of possible functions by a table of terminal permissions; no terminal can run any unauthorized function. Each agency can change passwords controlling such functions as patron registration and updating records. Passwords are necessary for any function that will alter the patron record. No person can see another's record through the Public Query function; a patron can see his/her own record, but cannot alter it.

Reports: Regularly produced by the overnight backup run- fines journal by fine type within library, report of barcode allocation, report of all file sizes, transaction totals.

Done in batch mode, on request- books on hold by call number, books reported missing by type and call number, contents of the hold shelf by patron, contents on hold shelves to be deleted by patron, data entry report, financial report by patron privilege within terminal group between dates, general financial transaction report, inter-agency activity report, item activity report by transaction type within agency, items currently charged out, items currently charged out past due date by department code and patron, items deleted from hold shelf, materials booking availability, missing books on loan, number of charge transactions, number of discharge transactions, number of items on reserve, old holds active since day "x", processing fees created, patron financial report by patron within agency, patrons eligible for refunds by patron, patron notices, replacement charges assessed, replacement charges listing with zero price by call number, replacement charges listing by author, reserve items sorted by author, call number, course, or professor, reserve usage list by professor, reserve weeding and stamping list, summary of notices, summary of notices long overdue, titles with high hold activity (purchase alerts), transaction statistics by terminal group within time period.

Generated by running the two report writers- general purpose bibliographic report writer to examine usage based on bibliographic files, and general purpose patron report writer which allows analysis of borrower groups and activity.

Geac can also custom design reports.

LIBS 100
CLSI

Security: The LIBS 100 System provides password security, through a variety of levels and access points, to prevent unauthorized access to on-line patron informaton, including patron borrowing records.

Reports:

Daily Log: generated for each branch, agency, or department; organized into categories such as circulation statistics, hold shelf list, copies withdrawn from circulation, fine overflow list, overdue overflow list.

Shelf Clearance Report: list of overdue books for which last late notices have been sent.

Portable Circulation Terminal Log.

Oldhold Reports: all outstanding hold requests placed on or before day "x".

Daytimedue Reports: all unreturned hourly loan items for day "x".

Patron Item List: all items currently charged to a specific patron; may be printed only by using a password supplied by CLSI.

Agency Reassignment Report: titles and item data for items whose agency code has been changed by the library.

Titlelist Report.

Titleform Fields List.

Patronlist Report: data on any or all patron and/or agency records, listing by alphabetic identifiers.

Circulation Statistical Reports: categorized by material classification, patron classification, and reciprocal borrowing classification.

Purge Reports: patrons, items, or titles to be deleted from files.

Report Summary List.

Systemlog: sent from library to CLSI for diagnostic examination.

Reporting Log: describes any system errors, sent to CLSI.

Patron Notices: hold notices, hold cancellation notices, recall notices, overdue notices, bill notification, final collection notices, fine notices, fine clearances.

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